



In the Matter of:

**DENNIS J. TAVARES,
COMPLAINANT,**

ARB CASE NO. 01-036

ALJ CASE NO. 01-STA-13

v.

**SWIFT TRANSPORTATION CO., INC.,
RESPONDENT.**

**DENNIS J. TAVARES,
COMPLAINANT,**

ARB CASE NO. 01-037

ALJ CASE NO. 01-STA-14

v.

**P C TRANSPORT,
RESPONDENT.**

**DENNIS J. TAVARES,
COMPLAINANT,**

ARB CASE NO. 01-038

ALJ CASE NO. 01-STA-15

v.

DATE: October 2, 2001

**FROZEN FOODS EXPRESS
TRANSPORTATION SERVICES,
RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

FINAL DECISION AND ORDER

Complainant Dennis J. Tavares filed three separate complaints with the Labor Department alleging that each of the Respondents in these cases retaliated against him in violation of the employee protection provisions of the Surface Transportation Assistance Act ("STAA"), 49

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

U.S.C.A. §31005 (West 1997). The Occupational Safety and Health Administration (“OSHA”)^{2/} investigated the complaints and, in separate letters issued on different dates, advised Tavares that it found no merit to any of them. OSHA further advised Tavares that he could seek review of its determinations by filing a request for hearing with the Office of Administrative Law Judges within 30 days.^{3/}

Although Tavares requested hearings on all three complaints, he filed the requests at least nine months beyond the 30-day time limit for appealing an adverse finding by OSHA. Consequently, the Administrative Law Judge (“ALJ”) directed Tavares to show cause why his complaints should not be dismissed because the hearing requests were untimely. In response, Tavares asserted that he was not properly served with the OSHA decisions and that as a professional truck driver he is often away from home, as long as one and one-half months. In a consolidated Recommended Decision and Order issued February 21, 2001, the ALJ rejected this excuse and recommended that we dismiss the complaint. The recommended decision of the ALJ is before the Board pursuant to the automatic review procedures of 29 C.F.R. §1978.109(c)(1).

In accordance with 29 C.F.R. §1978.109(c)(2), the Board invited all parties to file briefs in support of, or in opposition to, the ALJ’s recommended decision. None of the parties elected to file briefs.

Under the STAA implementing regulations, the Board is bound by the factual findings of the ALJ if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. §1978.109(c)(3). The Board reviews the ALJ’s conclusions of law *de novo*. *Johnson v. Roadway Express, Inc.*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000) citing *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

Here, the ALJ noted that the time limit for requesting hearings in these cases could be equitably tolled for a variety of reasons including inadequate notice. However, the ALJ went on to state:

Mr Tavares’ response to the [show cause order] asserts no analogous reasons to invoke equitable tolling. Mr. Tavares initially argues that his request for a hearing was not timely because he was not properly notified and served. However, this argument is conclusory; it provides no facts to support a finding that Mr Tavares was prevented from filing by improper service. Also, assuming Mr. Tavares’ occupation as a professional truck driver prevented him from filing his complaint in a timely fashion, it does not excuse his failure to file

^{2/} OSHA is the agency within the Department charged with investigating complaints that an employer has violated the STAA’s whistleblower protection provisions. 29 C.F.R. §1978.102(c) (2000).

^{3/} 49 U.S.C.A. §31105(b)(2)(B) provides that “the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record If a hearing is not requested within 30 days, the preliminary order is final and not subject to judicial review.”

his written objections until nearly ten months after he received his most recent notice of findings from the Secretary. In fact, over one year and eight months passed after the Secretary's first ruling and Mr. Tavares' first contact with this office [of Administrative Law Judges]. In each of her findings, the Secretary made clear that Mr. Tavares was required to submit any written objections to the Secretary's findings and request a formal hearing within 30 days of receiving this order. Mr. Tavares has not provided a basis for finding either that his filings were timely or that the statutory limitations should be tolled.

Tavares has not identified, nor do we find, any error in the ALJ's conclusion that Tavares' appeals were not timely filed. Accordingly, we concur with the ALJ's recommendation and **DISMISS** Tavares' complaints.

SO ORDERED.

PAUL GREENBERG
Chair

RICHARD A. BEVERLY
Alternate Member